

HOUSE No. 1722

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act clarifying, correcting and amending certain business entity laws.

PETITION OF:

NAME:

Angelo M. Scaccia
William F. Galvin

DISTRICT/ADDRESS:

14th Suffolk
Secretary of the Commonwealth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT CLARIFYING, CORRECTING AND AMENDING CERTAIN BUSINESS ENTITY LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 45 of chapter 108A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking subsection (6) and inserting in place thereof the following subsection:-

(6) If a partnership fails to file an annual report when due, pay the required fee, or the payment of any fee due the commonwealth was dishonored when presented for payment and the partnership has failed to correct the failure within 20 days after written notice of such failure was mailed to the partnership, the state secretary may revoke the registration of the partnership. The state secretary shall give the partnership at least 60 days notice of his intention to revoke the registration of the partnership. The notice shall be given by mail to the partnership at the address of its principal office as shown in the records of the state secretary. The notice shall specify the annual reports which have not been filed, the fees which have not been paid, the payment which has been dishonored, and the effective date of revocation. The revocation shall not be effective if the annual reports are filed, or the fees are paid, prior to the effective date of revocation.

SECTION 2.

Chapter 108A of the General Laws, as so appearing, is hereby further amended by adding the following new sections:-

Section 50. Electronic Filings

Electronic documents or transmissions may be filed with the secretary of state if, and to the extent, permitted by the secretary. The secretary of state may promulgate regulations regarding the procedures for electronic filings which supercede any inconsistent provisions of this chapter with respect to such filings.

Section 51. Correcting a Filed Certificate

- (a) A limited liability partnership may correct a document filed with the state secretary if the document:
- (1) contains a typographical error or an incorrect statement; or
 - (2) was defectively executed, attested, sealed, verified or acknowledged.
- (b) A document is corrected:
- (1) by preparing a certificate of correction that (i) describes the document, including its filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is incorrect or the manner in which the execution was defective and (iii) corrects the typographical error, incorrect statement or defective executions; and
 - (2) by delivering the certificate of correction to the secretary of state for filing.
- (c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate of correction is effective when filed.
- (d) If the secretary of state permits electronic filings, defects in the electronic recording or transmission of documents may be corrected under this section to the extent permitted by regulations promulgated by the secretary.
- (e) The fee for filing a certificate of correction is \$100.00.

Section 52. Pre-clearance of Filings

The fee for examining and provisionally approving any record at any time before the record is presented for filing is \$100.00.

SECTION 3.

Section 13 of chapter 109 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

- (a) A signed copy of the certificate of limited partnership and of any certificate of amendment or cancellation, or any judicial decree of amendment or cancellation, shall be

delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that the certificate does not conform to law, upon receipt of all filing fees required by law, he shall evidence his approval on or with the document. Upon such approval and payment of all filing fees required by law, the filing shall be deemed to be filed with the secretary of state.

SECTION 4.

Section 13 of chapter 109 of the General Laws, as so appearing, is further amended by adding the following new subsection:-

(c) Electronic documents or transmissions may be filed with the secretary of state if, and to the extent, permitted by the secretary. The secretary of state may promulgate regulations regarding the procedures for electronic filings which supercede any inconsistent provisions of this chapter with respect to such filings.

SECTION 5.

Chapter 109 of the General Laws, as so appearing, is further amended by adding, after section 13, the following new section:-

13A. Correcting a Filed Certificate

(a) A domestic or foreign limited partnership may correct a document filed with the state secretary if the document:

(1) contains a typographical error or an incorrect statement; or

(2) was defectively executed, attested, sealed, verified or acknowledged.

(b) A document is corrected:

(1) by preparing a certificate of correction that (i) describes the document, including its filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is incorrect or the manner in which the execution was defective and (iii) corrects the typographical error, incorrect statement or defective executions;

and

(2) by delivering the certificate of correction to the secretary of state for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate of correction is effective when filed.

(d) A certificate of correction cannot be used to change the effective date of a filed document; provided, however, that if a document has been filed with a delayed effective date, a certificate of correction may be filed prior to said date:

(1) to accelerate the effective date to a date not earlier than the date of the certificate of correction; or

(2) to abandon a merger or amendment if the authority to do so is granted by the merger agreement or the persons approving the amendment.

(e) If the secretary of state permits electronic filings, defects in the electronic recording or transmission of documents may be corrected under this section to the extent permitted by regulations promulgated by the secretary.

SECTION 6.

Chapter 109 of the General Laws is hereby further amended by striking Section 16 in its entirety.

SECTION 7.

Chapter 109 of the General Laws, as so appearing, is hereby amended by adding after section 43, the following new section:-

43A. Conversions

(a) As used in this section, an “other entity” means a corporation organized under chapter 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign nonprofit corporation and any association or entity other than a governmental or quasi-governmental organization. The term includes, without limitation, limited liability companies, general partnerships, limited liability partnerships, joint ventures, joint stock companies, business trusts and profit and not-for-profit unincorporated associations.

(b) A limited partnership may convert into an other entity and an other entity may convert into a limited partnership, provided in each case that if an other entity exists pursuant to the authority of a chapter of the General Laws, that chapter permits the conversion, and if an other entity is organized under the laws of a foreign jurisdiction, the laws of that jurisdiction permit the conversion.

(c) A limited partnership converting into an other entity shall comply with the terms of this section and of its certificate of limited partnership and its partnership agreement, to the extent they are applicable. An other entity converting into a limited partnership shall comply with the terms of any laws applicable to it and of its organic documents, to the extent they are applicable.

(d) A limited partnership or an other entity converting pursuant to the authority of this section (herein the “converting entity”) shall adopt a plan of entity conversion that contains substantially the information required by section 9.51 of chapter 156D to be contained in a plan of entity conversion of a business corporation, modified to account for the nature of the converting entity, as well as any information required by any laws applicable to the converting entity. The plan shall be approved by the converting entity in the manner an amendment of its organic documents must be approved.

(e) The converting entity shall file with the state secretary, and with any other governmental agency with which the converting entity or the surviving entity is required to make public filings, articles of entity conversion that contain substantially the information required by section 9.53 of chapter 156D to be contained in articles of entity conversion of a business corporation or a domestic or foreign other entity, modified to account for the nature of the converting entity and the surviving entity.

(f) The effect of a conversion authorized by this section shall be the same as is provided in section 9.55 of chapter 156D.

SECTION 8.

Section 55 of chapter 109, as so appearing, is hereby amended by adding the following new subsection:-

(c) A foreign limited partnership is liable to the commonwealth for the years or parts of years during which it transacted business in the commonwealth without delivering to the secretary of state for filing the certificate required by section 49, an amount equal to:

- (1) all fees which would have been imposed by law had it duly delivered the certificate; and

(2) all interest and penalties imposed by law for failure to pay the fees.
A foreign limited partnership is further liable to the commonwealth, for each month or part thereof during which it transacted business without delivering the certificate, an amount determined by the secretary of state, which shall in no event exceed the amount established by the Commissioner of Administration under section 3B of Chapter 7, except that a foreign limited partnership which has delivered such certificate shall not be liable for such monthly penalty for the first ten (10) days during which it transacted business without delivering such certificate. Such fees and penalties may be levied by the secretary of state. The attorney general may bring an action necessary to recover amounts due to the commonwealth under this subsection including an action to restrain a foreign limited partnership against which fees and penalties have been imposed pursuant to this subsection from transacting business in the commonwealth until the fees and penalties have been paid.

SECTION 9.

Chapter 109 is hereby amended by striking out section 61, as so appearing, and inserting in place thereof the following section:-

Section 61. Fees

The fee for filing in the office of the secretary of state any original certificate of limited partnership or application for registration as a foreign limited partnership shall be \$500.00. The fee for filing a certificate of amendment, correction, cancellation or withdrawal shall be \$100.00. The fee for reservation of a name shall be \$30.00.

SECTION 10.

Section 64 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) the state secretary may commence a proceeding to dissolve a limited partnership if:

(1) the limited partnership has failed for 2 or more consecutive years to comply with the laws requiring the filing of annual reports;

- (2) payment of any fee due the commonwealth was dishonored when presented for payment and the limited partnership has failed to correct the failure within 20 days after written notice of such failure was mailed to the limited partnership; or
- (3) he is satisfied that the limited partnership has become inactive and its dissolution would be in the public interest.

SECTION 11.

Section 65 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) The state secretary may commence a proceeding to revoke the authority of a foreign limited partnership to transact business in the commonwealth if:

- (1) the foreign limited partnership has failed for 2 consecutive years to comply with the laws requiring the filing of annual reports;
- (2) payment of any fee due the commonwealth was dishonored when presented for payment and the foreign limited partnership has failed to correct the failure within 20 days after written notice of such failure was mailed to the foreign limited partnership; or
- (3) he is satisfied that the revocation of the foreign limited liability partnership's authority to transact business in the commonwealth would be in the public interest.

SECTION 12.

Chapter 109, as so appearing, is hereby further amended by adding the following new sections:-

Section 67. Good Standing

A limited partnership shall be deemed to be in good standing with the secretary of state if such limited partnership appears, from the records of said secretary, to exist and has paid all fees due to the secretary, and no certificate of cancellation has been filed by or with respect to the limited partnership. Upon the request of any person and payment of such fee as may be prescribed by law, the state secretary shall issue a certificate stating, in substance, as to any limited partnership meeting the requirements of this section, that such limited partnership appears, from the records in his office, to exist

and to be in good standing, and stating the identity of any and all general partners who are named in the most recent document filed with the state secretary.

Section 68. Pre-clearance of Filings

The fee for examining and provisionally approving any record at any time before the record is presented for filing is \$100.00.

SECTION 13.

Section 17 of chapter 156C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

(a) The original signed copy of the certificate of organization and of any certificates of amendment or cancellation or any judicial decree of amendment or cancellation, of any certificate of consolidation, merger or conversion and of any restated certificate shall be delivered to the state secretary. A person who executes a certificate as an attorney-in-fact or fiduciary shall not be required to exhibit evidence of his authority as a prerequisite to filing. Any certificate authorized to be filed with the state secretary shall be originally signed except as otherwise required by this chapter or permitted from time to time by the state secretary. Unless the state secretary finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he shall evidence his approval on or with the document. Upon said approval and payment of all filing fees required by law, the filing shall be deemed filed with the secretary of state. Said endorsement shall be conclusive of the date and time of its filing in the absence of actual fraud.

SECTION 14.

Section 17 of said chapter 156C, as so appearing, is hereby further amended by adding to section 17 the following new paragraph:-

(c) Electronic documents or transmissions may be filed with the secretary of state if, and to the extent, permitted by the secretary. The secretary of state may promulgate regulations regarding the procedures for electronic filings which supercede any inconsistent provisions of this chapter with respect to such filings.

SECTION 15.

Chapter 156C of the General Laws, as so appearing, is further amended by adding, after section 17, the following new section:-

17A. Correcting a Filed Certificate

(a) A domestic or foreign limited liability company may correct a document filed with the state secretary if the document:

(1) contains a typographical error or an incorrect statement; or

(2) was defectively executed, attested, sealed, verified or acknowledged.

(b) A document is corrected:

- (1) by preparing a certificate of correction that (i) describes the document, including its filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is incorrect or the manner in which the execution was defective and (iii) corrects the typographical error, incorrect statement or defective execution; and
- (2) by delivering the certificate of correction to the secretary of state for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate of correction is effective when filed.

(d) A certificate of correction cannot be used to change the effective date of a filed document; provided, however, that if a document has been filed with a delayed effective date, a certificate of correction may be filed prior to said date:

(1) to accelerate the effective date to a date not earlier than the date of the certificate of correction, or

(2) to abandon a merger or amendment if the authority to do so is granted by the merger agreement or the persons approving the amendment.

(e) If the secretary of state permits electronic filings, defects in the electronic recording or transmission of documents may be corrected under this section to the extent permitted by regulations promulgated by the secretary.”

(f) The fee for filing a certificate of correction with the state secretary is \$100.00.

251 SECTION 16.

252 Section 48 of chapter 156C of the General Laws, as so appearing, is hereby amended by adding,
253 after clause 5, the following new clause:-

254 (5A) the name of any other person in addition to any manager who is authorized to
255 execute documents to be filed with the office of the state secretary, and at least one shall
256 be named if there are no managers.

257 SECTION 17.

258 Section 54 of chapter 156C, as so appearing, is amended by striking paragraph (a) and inserting in
259 place thereof:

260 (a) A foreign limited liability company is liable to the commonwealth for the years or
261 parts of years during which it transacted business in the commonwealth without
262 delivering to the secretary of state for filing the certificate required by section 48, an
263 amount equal to: -

264 (1) all fees which would have been imposed by law had it duly delivered
265 the certificate; and

266 (2) all interest and penalties imposed by law for failure to pay the fees.
267 A foreign limited liability company is further liable to the
268 commonwealth, for each year or part thereof during which it transacted
269 business without delivering the certificate, an amount not to exceed
270 \$500.00 except that a foreign limited liability company which has
271 delivered such certificate shall not be liable for such penalty for the first
272 10 days during which it transacted business without delivering such
273 certificate. Such fees and penalties may be levied by the secretary of
274 state. The attorney general may bring an action necessary to recover
275 amounts due to the commonwealth under this subsection including an
276 action to restrain a foreign limited liability company against which fees
277 and penalties have been imposed pursuant to this subsection from
278 transacting business in the commonwealth until the fees and penalties
279 have been paid. No such failure shall affect the validity of any contract
280 involving the foreign limited liability company, nor is a member or

manager of a foreign limited liability company liable for the obligations of the foreign limited liability company solely by reason of such failure, but no action shall be maintained or recovery had by the foreign limited liability company in any of the courts of the commonwealth as long as such failure continues. The failure of a foreign limited liability company to register with the state secretary shall not prevent the foreign limited liability company from defending any action, suit or proceeding in any of the courts of the commonwealth.

SECTION 18.

Chapter 156C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section 69 and inserting in place thereof:-

Section 69. Conversions

(a) As used in this section, an “other entity” means a corporation organized under chapter 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign nonprofit corporation and any association or entity other than a governmental or quasi-governmental organization. The term includes, without limitation, limited partnerships, general partnerships, limited liability partnerships, joint ventures, joint stock companies, business trusts and profit and not-for-profit unincorporated associations.

(b) A limited liability company may convert into an other entity and an other entity may convert into a limited liability company, provided in each case that if an other entity exists pursuant to the authority of a chapter of the General Laws, that chapter permits the conversion, and if an other entity is organized under the laws of a foreign jurisdiction, the laws of that jurisdiction permit the conversion.

(c) A limited liability company converting into an other entity shall comply with the terms of this section and of its certificate of organization and its operating agreement, to the extent they are applicable. An other entity converting into a limited liability company shall comply with the terms of any laws applicable to it and of its organic documents, to the extent they are applicable.

(d) A limited liability company or an other entity converting pursuant to the authority of this section (herein the “converting entity”) shall adopt a plan of entity conversion that

contains substantially the information required by section 9.51 of chapter 156D to be contained in a plan of entity conversion of a business corporation, modified to account for the nature of the converting entity, as well as any information required by any laws applicable to the converting entity. The plan shall be approved by the converting entity in the manner an amendment of its organic documents must be approved.

(e) the converting entity shall file with the secretary of state, and with any other governmental agency with which the converting entity or the surviving entity is required to make public filings, articles of entity conversion that contain substantially the information required by section 9.53 of chapter 156D to be contained in articles of entity conversion of a business corporation or a domestic or foreign other entity, modified to account for the nature of the converting entity and the surviving entity.

(f) The effect of a conversion authorized by this section shall be the same as is provided in section 9.55 of chapter 156D.

SECTION 19.

Chapter 156C, as most recently amended by chapter 182 of the Acts of 2008, is hereby further amended by adding, after section 72, the following new section:-

Section 73. Pre-clearance of Filings

The fee for examining and provisionally approving any record at any time before the record is presented for filing is \$100.00.

SECTION 20.

Section 1.20 of chapter 156D, as so appearing, is hereby amended by striking paragraph (h) and inserting in place thereof the following:-

(h) The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee and any payment or penalty required by this chapter or other law.

SECTION 21.

General Laws chapter 156D, as so appearing, is hereby further amended by striking section 1.22 and inserting in place thereof the following:-

Section 1.22. Filing Service and Copying Fees

(a) The fee for examining and provisionally approving any record at any time before the record is presented for filing is \$100.000.

(b) The commissioner of administration shall issue regulations prescribing fees for the filing and copying of documents, the issuance of certificates and the handling of service of process under this Act.

SECTION 22.

Section 9.50 of chapter 156D is hereby amended by striking clause (a) and inserting in place thereof:-

(a) A domestic business corporation may become a domestic other entity, provided that in the case of an other entity that exists pursuant to the authority of a chapter of the General Laws, that chapter permits. The conversion shall be effected pursuant to a plan of entity conversion. Section 9.55 governs the effect of converting to that form of a domestic other entity.

SECTION 23.

Section 9.50 of chapter 156D is hereby further amended by striking clause (c) and inserting in place thereof:-

(c) A domestic other entity may become a domestic business corporation, provided that in the case of a domestic other entity that exists pursuant to the authority of a chapter of the General Laws, that chapter permits. Section 9.55 governs the effect of converting to a domestic business corporation. If the organic law of a domestic other entity, including the chapter of the General Laws pursuant to which the other entity exists, does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity and its interest holders shall be entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other

entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised, in accordance with the procedures in this subdivision and PART 13 of this chapter.

Without limiting the provisions of this subsection, a domestic other entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and clause (7) of section 9.52. For purposes of applying this subdivision and PART 13 of this chapter:

(1) the other entity, its interest holders, interests and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares and articles of organization, respectively, and vice versa, as the context may require; and

(2) if the business affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

SECTION 24.

Section 14.20 of chapter 156D, as so appearing, is hereby amended by adding the following new clause at the end thereof:-

(c) payment of any fee due the commonwealth was dishonored when presented for payment and the corporation has failed to correct the failure within twenty (20) days after written notice of such failure was mailed to the corporation.

SECTION 25.

Section 14.23 of chapter 156D, as appearing, is hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall provide the corporation with a written notice that explains the reason or reasons for denial.

SECTION 26.

Section 15.30 of chapter 156D, as so appearing, is hereby further amended by striking said section and inserting in place thereof:-

Section 15.30. Grounds for Revocation

The secretary of state may commence a proceeding under section 15.31 to revoke the authority of a foreign corporation to transact business in the commonwealth if:

(a) the foreign corporation has failed for 2 or more consecutive years to comply with the law regarding the filing of reports with the secretary of state or the filing of tax returns or the payment of any taxes under chapter 62C or Chapter 63 for 2 or more consecutive years;

(b) the payment of any fee due the commonwealth was dishonored when presented for payment and the corporation has failed to correct the failure within 20 days after written notice of such failure was mailed to the corporation; or

(c) he is satisfied that the revocation of the foreign corporation's authority to transact business in the commonwealth would be in the public interest.

SECTION 27. Sections 7, 18, 22 and 23 shall be effective as of July 1, 2004.